

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.87236 of 2019

Arising Out of PS. Case No.-17 Year-2015 Thana- PHULWARISHARIF District- Patna

PARWEZ ALAM @ MD. PRAWEZ ALAM Son of Md. Bikku Alam @
Bikku Mallic Resident of Village Bijaura, P.S.- Bhagwanganj, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Uday Prasad, Adv

For the Opposite Party/s : Mr.Shyameshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT

Date : 08-01-2020

Heard learned counsel for the petitioner and learned APP
for the State.

The instant petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code'), has been filed for quashing the order dated 18.10.2019, passed by learned Additional Sessions Judge-II, Patna, in Sessions Trial Case No. 120 of 2019, arising out of Phulwarisharif (Janipur) P. S. Case No. 17 of 2015, by which the learned Court below has rejected the petition filed by the petitioner U/s 228 of the Cr. P. C. and fixed the case for framing of charge.

It is submitted by the petitioner's counsel that though sanction had been taken from the District Magistrate, Patna, for the offence Under Sections 25(1-B)a/26/27 of the Arms Act, the petitioner has also been prosecuted for offences under Section 25(1-AA) of the Arms Act. It is the submissions of the



petitioner's counsel that the prohibitive bore cartridge of 9 mm was inoperative and, therefore, the Court below should not have permitted the prosecution to continue in respect of offence under Section 25(1-AA) of the Arms Act.

The learned APP for the State has opposed the prayer. It is submitted that whether the cartridge was operative or inoperative is yet to be examined at the trial. The issue has to be examined and decided on the basis of evidence which is yet to be adduced in the Trial. The order of the Additional Sessions Judge-II, Patna, dated 18.10.2019, rejecting the petition filed by the petitioner under Section 228 of the Cr. P. C., does not merit any interference by this Court.

On consideration of the submissions advanced by the parties, this Court would observe that the submissions of State counsel appear to be correct. Whether the prohibitive bore cartridge of 9 mm was inoperative or operative was yet to be determined at the trial. The Court, exercising jurisdiction under Section 228 Cr.P.C., was required only to see whether there was sufficient material and compliance with legal procedure for taking the accused to trial, the same has been determined by the Court of Additional Sessions Judge by a detailed and speaking order. The other submissions of the petitioner's counsel that the



charge sheet could not have been submitted under Section 25 (1-AA) for want of sanction also appears to be without any substance. The District Magistrate under memo no. 698 dated 24.02.2015 has granted sanction for prosecution under Sections 25(1-B)a/26/27 of the Arms Act. These three provisions mentioned in the sanction order are being reproduced hereinafter:-

“25(1-B)a – acquires, has in his possession or carries any firearm or ammunition in contravention of Section 3; or

[26. Secret Contraventions.- (1)whoever does any act in contravention of any of the provisions of Section 3, 4,10 or 12 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and also with fine.

(2)Whoever does any act in contravention of any of the provisions of Section 5,6,7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine.

(3) Whoever on any search being made under Section 22 conceals or attempts to conceal any arms or ammunition, shall be punishable with imprisonment for a term which may extend to ten years and also with fine.]

[27. Punishment for using arms, etc.-(1)



Whoever uses any arms or ammunition in contravention of Section 5 shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

(2) whoever uses any prohibited arms or prohibited ammunition in contravention of Section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.

3. Whoever uses any prohibited arms or prohibited arms or prohibited ammunition or does any act in contravention of Section 7 and such use or act results in the death of any other person, shall be punishable with death.]”

Contravention of Section 3 of the Arms Act is included as being a punishable offence under Section 25(1-B)a of the Act, for which the District Magistrate has accorded sanction.

Section 3 of the Arms Act, as it then was, is the provision making license mandatory for acquisition and possession of fire arms and ammunition. It provides that no person shall acquire, have in his possession, or carry “any fire arm or ammunition” unless he holds a license issued in accordance with law for the same. The other sub sections contained in Section 3 also does not restrict the prohibition on acquisition possession of fire arms and ammunition without license to arms of one bore category or the other. The expression used in Section 3 is any fire arm.

The same undoubtedly covers arms of prohibited bore as



well. The fact that the District Magistrate has sanctioned the prosecution under Section 25(1-B)a therefore does not, in any way limit the prosecution to proceed for trying the offences under Section 25(1-AA) of the Arms Act, in respect of prohibited Arms or prohibited ammunition.

The order of the Additional Sessions Judge-II, Patna, rejecting the petition filed by the petitioner under Section 228 Cr. P. C., having the effect of allowing the prosecution to proceed for the offence under Section 25(1-AA), therefore does not require any interference.

No case is made out for exercise of jurisdiction under Section 482 Cr.P.C.

Rejection of the instant petition, however, shall not in any manner prejudice the petitioner at the trial.

The application is devoid of merit and is, accordingly, dismissed.

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14.02.2020
Transmission Date	14.02.2020

